

**IN THE COURT OF APPEALS OF IOWA**

No. 0-253 / 09-1481

Filed May 26, 2010

**MARVIN SMITH and ANA SMITH,**  
Plaintiffs-Appellants,

**vs.**

**STATE FARM FIRE & CASUALTY  
INSURANCE COMPANY,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Webster County, Thomas J. Bice,  
Judge.

Marvin Smith and Ana Smith appeal the grant of summary judgment.

**AFFIRMED.**

James Quilty, Des Moines, for appellants.

J. Michael Weston, Cedar Rapids, for appellee.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ.

**VOGEL, P.J.**

Marvin and Ana Smith appeal the grant of summary judgment for defendant State Farm Fire & Casualty Insurance Company (State Farm). They assert the district court erred in finding they were barred by the one-year limitation period contained in the State Farm policy for filing a suit. We affirm.

**I. Background Facts and Proceedings**

On the morning of July 16, 2006, the Smiths reported their 2000 Mercury Mountaineer stolen. They reported that it was last seen in their driveway at approximately 12:00 a.m. The vehicle was recovered in a wooded area approximately one-half mile from the Smiths' residence. The vehicle had been burned, along with personal property contained inside the vehicle. The Smiths had two insurance policies through State Farm, one automobile policy and one home policy, the latter of which covered personal property in the vehicle.

Following their filing of a claim for compensation, State Farm conducted an investigation into the reported loss. State Farm requested sworn statements, which the Smiths submitted in December 2006, approximately five months after the loss, and financial records, which State Farm received approximately eight months after the loss. On May 11, 2007, State Farm wrote a letter to the Smiths' attorney explaining why the claim was being denied, stating,

No payment is owed to your clients under the policy of insurance because: (1) there has not been a "loss" as defined by the policy, or (2) there has been a violation of the concealment or fraud provision of the policy, and (3) your clients have breached their duties under the insurance contract.

The Smiths filed a petition with a jury demand in district court on April 25, 2008, twenty-one months after the date of loss, alleging breach of contract and bad

faith against State Farm. State Farm filed a motion for summary judgment, asserting the suit was filed more than one year following the fire and was therefore barred. Following a hearing on August 31, 2009, the district court granted State Farm's motion for summary judgment. The Smiths appeal.

## **II. Standard of Review**

We review the grant or denial of summary judgment for errors at law. *Harvey v. Care Initiatives, Inc.*, 634 N.W.2d 681, 683 (Iowa 2001). Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. Iowa R. Civ. P. 1.981; *Dudden v. Goodman*, 543 N.W.2d 624, 626 (Iowa Ct. App. 1995). We review the record in the light most favorable to the party against whom the summary judgment was granted. *Lloyd v. Drake Univ.*, 686 N.W.2d 225, 228 (Iowa 2004).

## **III. Summary Judgment**

The Smiths contend the district court erred in granting State Farm's motion for summary judgment, asserting that evidence was presented which demonstrated State Farm either waived the one-year contractual provision for filing suit or was estopped from asserting it. Therefore, they allege a material fact remained in dispute, and consequently summary judgment was inappropriate.

Waiver is defined as "the voluntary or intentional relinquishment of a known right." *Travelers Indemnity Co. v. Fields*, 317 N.W.2d 176, 186 (Iowa 1982). Waiver can be shown by the affirmative acts of a party, or can be inferred

from conduct that supports the conclusion waiver was intended. *Scheetz v. IMT Ins. Co. (Mut.)*, 324 N.W.2d 302, 304 (Iowa 1982). Essential elements of waiver are existence of right, knowledge, actual or constructive, and intention to relinquish that right. *Id.* Shortness of time between denial of liability and the end of the one-year period is merely one relevant factor to consider in waiver. *Brunner v. United Fire & Cas. Co.*, 338 N.W.2d 151, 153 (Iowa 1983). The court must consider all of the circumstances surrounding the parties' negotiations in determining whether the insurer engaged in conduct through which it relinquished the limitation. *Id.*

The Smiths' State Farm insurance policy contained a contract provision which read, "No action shall be brought unless there has been compliance with the policy provisions. The action must be started within one year after the date of loss or damage."<sup>1</sup> The Smiths allege State Farm's denial of their claim eight weeks prior to this one-year limitation period was waiver of the contractual limitation because it was "unreasonably short notice" and State Farm's claim investigation "induced" their delay of pursuing legal action. While the issue of implied waiver is generally one of fact for the jury, when the evidence is undisputed, the issue is one of law for the court. *Scheetz*, 324 N.W.2d at 304. After consideration of the summary judgment record, we find this issue was appropriately determined by the district court.

Although the Smiths cite unreasonable delay in claim denial by State Farm, by the Smiths' admission, they did not submit sworn statements until five

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<sup>1</sup> In Iowa the one-year period runs from the date of the casualty. *Brunner*, 338 N.W.2d at 152.

months after the date of loss, and financial records until eight months following the date of loss. The Smiths presented allegations of State Farm's intentional delay of the claim process but failed to produce material facts supporting these allegations. They further produced no case law supporting their contention that eight weeks was "unreasonably short notice" resulting in waiver. The district court found, "The terms of the applicable insurance policies that require suit will be brought within one year are valid. . . . Plaintiffs fail to demonstrate a factual issue relative to waiver and estoppel." We agree and find upon review of the record that no evidence demonstrates an intentional and unreasonable delay on the part of State Farm and therefore, the court did not err in rejecting the Smiths' waiver claim.

The Smiths also allege equitable estoppel should have precluded State Farm from being granted summary judgment. Equitable estoppel prevents a defendant from asserting the bar of the statute of limitations based on its agreement, representations, or conduct amounting to false representation or concealment, and a party relying thereon must be thereby misled into doing or failing to do something he would not otherwise have done or omitted. *Christy v. Miulli*, 692 N.W.2d 694, 700 (Iowa 2005). Upon review of the record, we find the Smiths failed to present evidence establishing State Farm made any false representations or concealed any material facts which induced the Smiths to delay filing suit beyond the one-year contractual period.

Finding no material facts in dispute, we affirm the district court's granting of summary judgment to State Farm.

**AFFIRMED.**